

office and customers in the United States; and

(2) Does not have authority to make any business decision (other than decisions relating to the premises or personnel of the representative office) for the account of the organization it represents, including contracting for any deposit or deposit-like liability on behalf of the organization.

(u) *Strongly capitalized* means:

(1) In relation to a parent member bank, that the standards set out in 12 CFR 208.43(b)(1) are satisfied; and

(2) In relation to an Edge or Agreement corporation or a bank holding company, that it has a total risk-based capital ratio of 10.0 percent or greater.

(v) *Subsidiary* means an organization more than 50 percent of the voting shares of which is held directly or indirectly, or which is otherwise controlled or capable of being controlled, by the investor or an affiliate of the investor under any authority. Among other circumstances, an investor is considered to control an organization if the investor or an affiliate is a general partner of the organization or if the investor and its affiliates directly or indirectly own or control more than 50 percent of the equity of the organization.

(w) *Tier 1 capital* has the same meaning as provided under the Capital Adequacy Guidelines (12 CFR part 208, appendix A).

(x) *Well managed* means that the Edge or Agreement corporation, its parent member bank, if any, and the bank holding company have each received a composite rating of 1 or 2 at its most recent examination or review and are not subject to any supervisory enforcement action.

[56 FR 19565, Apr. 29, 1991, as amended at 57 FR 12997, Apr. 15, 1992; 58 FR 6358, Jan. 28, 1993; 60 FR 67054, Dec. 28, 1995; 63 FR 58621, Nov. 2, 1998]

§ 211.3 Foreign branches of U.S. banking organizations.

(a) *Establishment of foreign branches—*

(1) *Right to establish branches.* Foreign branches may be established by any member bank having capital and surplus of \$1,000,000 or more, an Edge corporation, an Agreement corporation, or a subsidiary held pursuant to this subpart. Unless otherwise provided in this

section, the establishment of a foreign branch requires the specific prior approval of the Board.

(2) *Branching within a foreign country.* Unless the organization has been notified otherwise, no prior Board approval is required for an organization to establish additional branches in any foreign country where it operates one or more branches.²

(3) *Branching into additional foreign countries.* After giving the Board 45 days' prior written notice, an organization that operates branches in two or more foreign countries may establish a branch in an additional foreign country, unless notified otherwise by the Board.²

(4) *Expiration of branching authority.* Authority to establish branches through prior approval or prior notice shall expire one year from the earliest date on which the authority could have been exercised, unless the Board extends the period.

(5) *Reporting.* Any organization that opens, closes, or relocates a branch shall report such change in a manner prescribed by the Board.

(b) *Further powers of foreign branches of member banks.* In addition to its general banking powers, and to the extent consistent with its charter, a foreign branch of a member bank may engage in the following activities so far as usual in connection with the business of banking in the country where it transacts business:

(1) *Guarantees.* Guarantee debts, or otherwise agree to make payments on the occurrence of readily ascertainable events,³ if the guarantee or agreement specifies a maximum monetary liability; but except to the extent that the member bank is fully secured, it may not have liabilities outstanding for any person on account of such guarantees or agreements which, when aggregated

²For the purpose of this paragraph, a subsidiary other than a bank or an Edge or Agreement corporation is considered to be operating a branch in a foreign country if it has an affiliate that operates an office (other than a representative office) in that country.

³*Readily ascertainable events* include, but are not limited to, events such as nonpayment of taxes, rentals, customs duties, or costs of transport and loss or nonconformance of shipping documents.

with other unsecured obligations of the same person, exceed the limit contained in paragraph (a)(1) of section 5200 of the Revised Statutes (12 U.S.C. 84) for loans and extensions of credit;

(2) *Government obligations.* Underwrite, distribute, buy, sell, and hold obligations of:

(i) The national government of the country in which the branch is located;

(ii) An agency or instrumentality of the national government where supported by the taxing authority, guarantee, or full faith and credit of the national government; and

(iii) A political subdivision of the country;

Provided however that, no member bank may hold, or be under commitment with respect to, such obligations for its own account in an aggregate amount exceeding the greater of:

(A) 10 percent of its Tier 1 capital; or

(B) 10 percent of the total deposits of the bank's branches in that country on the preceding year-end call report date (or the date of acquisition of the branch in the case of a branch that has not been so reported);

(3) *Other Investments.* Invest in:

(i) The securities of the central bank, clearing houses, governmental entities other than those authorized under paragraph (b)(2) of this section, and government-sponsored development banks of the country in which the foreign branch is located;

(ii) Other debt securities eligible to meet local reserve or similar requirements; and

(iii) Shares of automated electronic payments networks, professional societies, schools, and the like necessary to the business of the branch;

Provided however that, the total investments of the bank's branches in that country under this paragraph (exclusive of securities held as required by the law of that country or as authorized under section 5136 of the Revised Statutes (12 U.S.C. 24, Seventh)) may not exceed 1 percent of the total deposits of the bank's branches in that country on the preceding year-end call report date (or on the date of acquisition of the branch in the case of a branch that has not so reported);

(4) *Credit extensions to bank's officers.* Extend credit to an officer of the bank

residing in the country in which the foreign branch is located to finance the acquisition or construction of living quarters to be used as the officer's residence abroad, provided however that:

(i) The credit extension is reported promptly to the branch's home office; and

(ii) Any extension of credit exceeding \$100,000 (or the equivalent in local currency) is reported also to the bank's board of directors;

(5) *Real estate loans.* Take liens or other encumbrances on foreign real estate in connection with its extensions of credit, whether or not of first priority and whether or not the real estate has been improved;

(6) *Insurance.* Act as insurance agent or broker;

(7) *Employee benefits program.* Pay to an employee of the branch, as part of an employee benefits program, a greater rate of interest than that paid to other depositors of the branch;

(8) *Repurchase agreements.* Engage in repurchase agreements involving securities and commodities that are the functional equivalents of extensions of credit;

(9) *Investment in subsidiaries.* With the Board's prior approval, acquire all of the shares of a company (except where local law requires other investors to hold directors' qualifying shares or similar types of instruments) that engages solely in activities:

(i) In which the member bank is permitted to engage; or

(ii) That are incidental to the activities of the foreign branch; and

(10) *Other activities.* With the Board's prior approval, engage in other activities that the Board determines are usual in connection with the transaction of the business of banking in the places where the member bank's branches transact business.

(c) *Reserves of foreign branches of member banks.* Member banks shall maintain reserves against foreign branch deposits when required by part 204 of this chapter (Regulation D).

§211.4 Edge and Agreement corporations.

(a) *Organization—(1) Board authority.* The Board shall have the authority to approve: